

# Biological mitigation ordinance

ORDINANCE NO. 8845 (NEW SERIES)

## MSCP BIOLOGICAL MITIGATION ORDINANCE

The Board of Supervisors of the County of San Diego ordains as follows:

Section 1. The Biological Mitigation Ordinance is hereby adopted to read as follows:

### **Article I. Findings, Purpose and Intent.**

The Board of Supervisors finds that the ecosystems of the County and the vegetation communities and sensitive species they support are fragile, irreplaceable resources that are vital to the general welfare of all residents; these vegetation communities contain habitat value which contributes to the region's environmental resources; special protections for these vegetation communities must be established to prevent future endangerment of the plant and animal species that are dependent upon them. This Ordinance will protect the County's biological resources and prevent their degradation and loss by guiding development outside of biological resource core areas, and by establishing mitigation standards which will be applied to discretionary projects. Adoption and implementation of this Ordinance will enable the County of San Diego to achieve the conservation goals set forth in the Subarea Plan for the Multiple Species Conservation Plan ("MSCP"), adopted by the Board of Supervisors on October 22, 1997, and will preserve the ability of affected property owners to make reasonable use of their land subject to the requirements of the California Environmental Quality Act (CEQA), Public Resources Code section 21000 and following, and other applicable laws, and the avoidance and mitigation requirements contained herein.

This Ordinance sets forth the criteria for avoiding impacts to Biological Resource Core Areas and to plant and animal populations within those areas, and the mitigation requirements for all projects requiring a discretionary permit. It is the policy of this Ordinance to promote the preservation of biological resources by directing preservation toward land which

can be combined into contiguous areas of habitat or linkages. It is further the policy of this ordinance to give greater value to the preservation of large contiguous Biological Resource Core Area or to linkages when formulating avoidance and mitigation requirements.

The ordinance consists of two parts. The first part explains how mitigation for impacts is determined. The habitat and vegetation community must first be identified at the impact site and at the area proposed for mitigation. This section directs mitigation to areas that will lead to ultimate assembly of a regional preserve system consisting of core habitat areas and the linkage that connect them.

The second part of the ordinance sets out specific mitigation requirements for impacts to certain species. These species specific mitigation requirements are necessary because San Diego County has a high number of sensitive plants and animal species occurring within and without the preserved areas. Protecting these sensitive species is required in order to gain coverage of the species under the MSCP plan. Depending on the sensitivity of the individual species, their avoidance or mitigation is also necessary in order to comply with the California Environmental Quality Act. The two parts work together and are to be applied at the same time.

Nothing in this Ordinance shall be construed to reduce any requirements to protect environmentally sensitive lands contained in any other County plan, ordinance, policy or regulation or the California Environmental Quality Act (CEQA), Public Resources Code section 21000 and following and the State CEQA Guidelines, 14 Ca. Code Regs. Section 15000, and following.

## **Article II. Application of Regulations.**

Except as provided in Article III, below, this Ordinance shall apply to all land within San Diego County shown on the MSCP Boundary Map (Attachment A). Upon application for a discretionary approval subject to CEQA, the applicant shall be required to comply with the procedures set forth in this Ordinance. No project requiring a discretionary permit shall be approved unless a finding is made that the project is consistent with the MSCP Plan, the County Subarea Plan and the provisions of this Ordinance.

## **Article III. Exemptions.**

A This Ordinance shall not apply to the following:

1. Any project which is exempt from CEQA.
2. The adoption or amendment of the General Plan.

3. The adoption or amendment of any Ordinance, including but not limited to the Zoning Ordinance.
4. Any Take Authorization Area approved by the Board of Supervisors and the Wildlife Agencies as part of the County Subarea Plan, as shown on Attachment B, or any approved Habitat Loss Permit issued pursuant to 16 U.S.C. sec. 1533 (d).
5. Any project for which and to the extent that a Vesting Tentative map approved prior to (date of enactment of this ordinance) or a Public Benefit Agreement approved prior to (date of enactment of this ordinance), confers vested rights under County Ordinance or State law to proceed with development notwithstanding the enactment of this Ordinance. Projects subject to this exemption must comply with all provisions of State and Federal law.
6. Any project for which the Board of Supervisors has determined that application of this Ordinance would result in the applicant being deprived of all reasonable economic use of the property in violation of Federal or State Constitutional prohibitions against the taking of property without just compensation.
7. REPEALED (8/9/00)
8. Brushing and Clearing on existing parcels 10 acres and under in size containing a dwelling unit as of the date of adoption of this ordinance.
9. A public facility or public project, determined to be essential by the County, including but not limited to a County Park or County recreational facility, provided that the County decision making body considering an application for such a project makes the following findings:
  - a. The facility or project is consistent with the County General Plan, the MSCP Plan and Subarea Plan, as approved by the Board of Supervisors;
  - b. All feasible mitigation measures have been incorporated into the facility or project, and there are no feasible, less environmentally damaging locations, alignments or non-structural alternatives that would meet project objectives;
  - c. Where the facility or project encroaches into a wetland or floodplain, mitigation measures are

required that result in a net gain in wetland and/or riparian habitat;

- d. Where the facility or project encroaches into steep slopes, native vegetation will be used to revegetate and landscape cut and fill areas;
  - e. No mature riparian woodland is destroyed or reduced in size due to otherwise allowed encroachments; and
  - f. All Critical Populations of Sensitive Plant Species Within the MSCP Subarea, (Attachment C); Rare, Narrow Endemic Animal Species Within the MSCP Subarea, (Attachment D); Narrow, Endemic Plant Species Within the MSCP subarea, (Attachment E); and San Diego County Sensitive Plant Species, as defined herein will be avoided as required by, and consistent with, the terms of the Subarea Plan.
10. Any sand, gravel or mineral extraction project provided that the authority considering an application for such project makes the following findings and the following mitigation measures are required as conditions of any use permit approved for such project:
- a. The facility or project is consistent with the County General Plan, the MSCP Plan, and the Subarea Plan as approved by the Board of Supervisors;
  - b. All feasible mitigation measures have been incorporated that meet the standards for mitigation required by CEQA and the State Surface Mining and Reclamation Act of 1975;
  - c. Any wetland buffer area shall be restored to protect environmental values of adjacent wetlands;
  - d. In a floodplain, reclamation shall result in a net gain in functional wetlands and riparian habitat in or adjacent to the area of extraction;
  - e. Native vegetation shall be used on steep slope lands to revegetate and landscape cut areas and fill areas in order to substantially restore the original habitat value, and slopes shall be graded to produce contours and soils which reflect a landform that is consistent with the approved Reclamation Plan;

- f. Mature riparian woodland may not be destroyed or reduced in size due to sand, gravel and mineral extraction; and
- g. All Critical Populations of Sensitive Plant Species Within the MSCP Subarea, (Attachment C); Rare, Narrow Endemic Animal Species Within the MSCP Subarea, (Attachment D); Narrow Endemic Plant Species Within the MSCP subarea, (Attachment E); and San Diego County Sensitive Plant Species, as defined herein will be avoided as required by, and consistent with, the terms of the Subarea Plan.

Use of the extraction area after reclamation shall be subject to all requirements of this Ordinance.

- 11. Agriculturally related clearing within the MSCP Subarea, provided that such grading and clearing meets all the following requirements:
  - a. The land is not located within the Preapproved Mitigation Area shown on the Wildlife Agencies' Preapproved Mitigation Map, Attachment F.
  - b. The applicant has farmed the land during three of the last five years and intends to retain the land in agriculture for the next five years or the applicant intends to establish an agricultural operation on the particular parcel of land within one year and to retain the land in agriculture for at least ten years.
  - c. The land is not located within a floodplain.

An applicant for an agricultural clearing project meeting these requirements shall provide evidence in writing of the facts that support a - c above. In addition, the number of acres and location of the land for which the exemption is sought shall be provided. As part of the application the applicant shall sign an agreement to maintain the land in agriculture for the applicable holding period set forth in 10.b.

- 12. Parcels ten acres and under in size zoned for single family residential uses shall be allowed to conduct clearing without complying with the provisions of this ordinance in the following circumstances. To qualify for this exemption, a finding must be made that the clearing will not interfere with the assembly of the Multiple Species Conservation Plan Preserve according to the terms of the MSCP Plan and the Subarea Plan. The

total number of acres cleared per parcel may not exceed the amounts set forth below.

- a. Parcels located within the Pre-Approved Mitigation Area shown on Attachment F, that are ten acres and under in size and zoned for single family residential uses may clear a total of two acres without complying with the terms of this ordinance. Clearing required pursuant to applicable fire safety regulations shall not be counted in computing the number of acres cleared.
- b. Parcels located outside the Pre-Approved Mitigation Area that are ten acres and under in size and zoned for single family residential uses may clear a total of five acres without complying with the terms of this ordinance. Clearing required pursuant to applicable fire safety regulations shall not be counted in computing the number of acres cleared.
- c. Projects which qualify for this exemption shall provide the following information to the Department of Planning and Land Use:
  - (1) The location of the parcel to be cleared.
  - (2) The zoning of the parcel to be cleared.
  - (3) The size of the parcel to be cleared.
  - (4) The number and location of the number of acres to be cleared.

- B. Certificates of Participation. Projects which have received their discretionary approvals from the County prior to the effective date of this Ordinance may, at the option of the project proponent apply for Certificates of Participation using the process set forth below:

The County shall review such applications to determine if the project conforms to the standards of the County Subarea Plan and this Ordinance. If the review results in a determination that the project conforms to those standards, the County will issue draft Findings of Conformance for a 45-day review period by the Wildlife Agencies. Unless written objections related to the Findings of Conformance are received from the Wildlife Agencies by the end of the 45-day review period, the County will issue the Certificate

of Participation. If the County finds that the proposed project does not meet the standards set forth in the Subarea Plan and this Ordinance, the project proponent will be informed of the deficiencies and proper procedures for achieving and assuring conformance to the requirements.

#### **Article IV. Administrative Process and Evaluations.**

- A. Application:** Projects required to submit an Environmental Initial Study, pursuant to the San Diego County CEQA Guidelines, Article 5, Section 5.2, shall submit to the Department of Planning and Land use a vegetation map prepared by a biological consultant chosen from the County's list of biological consultants, or proof, to the satisfaction of the Director, that no vegetation exists on the site. When review of the vegetation map indicates that the site is likely to support Sensitive Species, County staff may require preparation of a species survey report prepared by a biological consultant chosen from the County's list of biological consultants. County staff will inform the applicant of the need to prepare such a species survey report within 30 days from the date of submission of the vegetation map. The report shall indicate the presence or absence of any Sensitive Species, and its location and numbers. The studies required pursuant to this Section shall be performed using the latest protocols approved by the Wildlife Agencies at the time of submission of the application.

#### **Article V. Project Design Criteria.**

- A. Project Design Criteria.** Impacts to Critical Populations of Sensitive Plant Species Within the MSCP subarea (Attachment C), Significant Populations of Rare, Narrow Endemic Animal Species Within the MSCP Subarea (Attachment D), Narrow Endemic Plant Species Within the MSCP Subarea (Attachment E), or San Diego County Sensitive Plants, as defined herein, and impacts to land determined to be a Biological Resource Core Area shall be avoided to the maximum extent practicable by using the following design criteria:

1. Project development shall be sited in areas which minimize impact to habitat;
2. Clustering to the maximum extent permitted by County regulations shall be considered where necessary as a means of achieving avoidance;
3. Notwithstanding the requirements of the Slope Encroachment Regulations contained within the Resource Protection Ordinance, effective October 10, 1991,

projects shall be allowed to utilize design which may encroach into steep slopes to avoid impacts to habitat;

4. The County shall consider reduction in road standards to the maximum extent consistent with public safety considerations;
5. Projects shall be required to comply with applicable design criteria in the County MSCP Subarea Plan, attached hereto as Attachment G (Preserve Design Criteria) and Attachment H (Design Criteria for Linkages and Corridors).

#### **Article VI. Habitat Based Mitigation.**

**A. Mitigation Requirements.** The following section specifies the process for determining mitigation requirements for sensitive habitats:

1. **Determination Whether Land Qualifies as Biological Resource Core Area.** The impact site and the mitigation site shall be evaluated to determine if either or both sites qualify as a Biological Resource Core Area.

**a. The impact site is a Biological Resource Core Area if it meets one or more of the following criteria:**

- i. The land is shown as preapproved mitigation area on the wildlife agencies' preapproved mitigation map, (Attachment F);
- ii. The land is located within an area of habitat which contains biological resources that support or contribute to the long-term survival of Sensitive Species, which determination is based upon a biological analysis approved by the Director, and is adjacent or contiguous to preserved habitat that is within the preapproved mitigation area on the wildlife agencies' preapproved mitigation map (Attachment F);
- iii. The land is part of a regional linkage/corridor. A regional linkage/corridor is either:

A. land which contains topography which serves to allow for the movement of all sizes of wildlife and is used by wildlife, including large animals on a regional scale;

and contains adequate vegetation cover providing visual continuity so as to encourages the use of the corridor by wildlife; or

B. it has been identified as the primary linkage/corridor between the northern and southern regional populations of the California gnatcatcher in the population viability analysis for the California gnatcatcher, MSCP Resource Document Volume II, Appendix A-7 (Attachment I).

- iv. The land is shown on the Habitat Evaluation Map (Attachment J) as Very High or High and links significant blocks of habitat, except that land which is isolated or links small, isolated patches of habitat and land that has been affected by existing development to create adverse edge effects shall not qualify as Biological Resource Core Area;
  - v. The land consists of or is within a block of habitat greater than 500 acres in area of diverse and undisturbed habitat that contributes to the conservation of Sensitive Species;
  - vi. The land contains a high number of Sensitive Species and is adjacent or contiguous to surrounding undisturbed habitats, or contains soil derived from the following geologic formations which are known to support Sensitive Species:
    - A. gabbroic rock;
    - B. metavolcanic rock;
    - C. clay;
    - D. coastal sandstone.
- b. The mitigation Site is a Biological Resource Core area if it meets one or more of the criteria listed below. A vegetation map of the proposed mitigation site may be required to determine whether the criteria are met.**
- i. The land is part of a conservation bank recognized by the Wildlife Agencies as contributing to a HCP/NCCP Plan and located within the MSCP Subarea Boundary Map Area; or
  - ii. The land meets any or all of the criteria identified in Article VI. above.

2. **Determination of Tier on Impact Site.** Based on the information in the vegetation map prepared pursuant to Article IV, the tier level of the impact site shall be identified in accordance with the List of San Diego County Vegetation Communities and Tier Levels Within the MSCP (Attachment K).
3. **Determination of Tier on Mitigation site.** The tier level of the mitigation site shall be identified in accordance with the List of San Diego County Vegetation Communities and Tier Levels Within the MSCP (Attachment K). Mitigation for impacts to vegetation communities within the MSCP Subarea shown on the MSCP Boundary Map (Attachment A) shall occur in vegetation communities within the MSCP Subarea. Mitigation shall be within a habitat tier equal to or greater than the impact site with two exceptions:
  - a. Mitigation may be out of tier if mitigation credits are acquired from a mitigation bank located within the MSCP Subarea, and use of the credits is consistent with Board of Supervisors Policy I-117 (Attachment L).
  - b. Mitigation must be in-kind for the following types of habitat:

Southern Maritime Chaparral, Maritime Succulent Scrub, and vegetation communities specified under the category "Wetlands" in Tier I, the List of San Diego County Vegetation Communities and Tier Levels Within the MSCP (Attachment K).
4. **Determination of the Mitigation Ratio.** Using the Table of Mitigation Ratios (Attachment M), determine the mitigation ratio by locating the tier of the vegetation community to be impacted, based on whether the impact site and mitigation site are Biological Resource Core Areas.

## **Article VII. Species-Based Mitigation.**

- A. **The following section specifies the process for determining mitigation requirements for sensitive plant populations and for sensitive animal populations.**
  1. **Sensitive Plant Populations.**
    - a. **Critical Populations of Sensitive Plant Species.**

During project design, first priority shall be

given to avoidance of impacts populations of sensitive plant species listed on the Critical Populations of Sensitive Plant Species Within the MSCP subarea (Attachment C). Where complete avoidance is infeasible, County staff will work with the project proponent to design the project to minimize impacts to the Critical Population to the maximum extent practicable.

- b. Avoidance of Sensitive Plants.** Impacts to Narrow Endemic Plant Species Within the MSCP Subarea (Attachment E), or Sensitive Plant Species, as defined, that meet the criteria in Group A or B shall be avoided to the maximum extent practicable. Where complete avoidance is infeasible, encroachment may be authorized depending on the sensitivity of the individual species and the size of the population except that encroachment shall not exceed 20% of the population on site. Where impacts are allowed, in-kind preservation shall be required at a 1:1 to 3:1 ratio depending on the sensitivity of the species and population size, as determined in a biological analysis approved by the Director.
- c. Mitigation for Sensitive Plant Species in Groups C and D.** Sensitive Plant Species, as defined, in Groups C and D shall be protected by using the design requirements and habitat-based mitigation requirements set forth in Articles V and VI. Notwithstanding the foregoing, when said design requirements and habitat-based mitigation would have the effect of substantially reducing the viability of the affected population or the species, mitigation shall be in-kind, and the mitigation required will be set at a ratio based on the sensitivity of the species and population size, as determined in a biological analysis approved by the Director.

## **2. Sensitive Animal Populations.**

- a. Rare, narrow, endemic Animal Species.** Impacts to Rare, Narrow Endemic Animal Species Within the MSCP subarea (Attachment D) shall be avoided to the maximum extent practicable. Avoidance requirements shall meet any species specific requirements set forth in Table 3-5 of the MSCP Plan including any applicable limitations on clearing of occupied habitat. Where complete avoidance is infeasible, projects shall be

designed to avoid any significant reduction in species viability.

- b. Impacts to Burrowing Owl Habitat.** Impacts to Burrowing Owl Habitat shall be avoided to the maximum extent practicable. Where impacts are unavoidable, the following mitigation measures shall be required: (1) any impacted individuals must be relocated out of the impact area using passive or active methodologies approved by the Wildlife Agencies; (2) mitigation for impacts to occupied habitat, must be through the conservation of occupied burrowing owl habitat or lands appropriate for restoration, management and enhancement of burrowing owl nesting and foraging requirements at a ratio of no less than 1:1 for the territory of the burrowing owl.
- c. Impacts to Arroyo Toad Habitat.** Impacts to upland habitats within 1 km of riparian habitat which supports or is likely to support Arroyo toad shall be minimized to the maximum extent practicable.
- d. Management Conditions for Vireo belli pusillus, Least Bell's vireo.** Conditions shall be developed for projects located adjacent to Least Bell's Vireo habitat to monitor and control the population of brown-headed cowbirds.
- e. Other Sensitive Animal Species.** For other Sensitive animal species as defined in Article VI, impacts will be mitigated through habitat based mitigation requirements as set forth in Article V. In any case in which mitigation would have the effect of substantially reducing the viability of the affected population or the species, mitigation shall be in kind and the mitigation required will be set at a ratio based on the sensitivity of the species and the population size, as determined in a biological analysis approved by the Director.
- 3. Vernal Pools.** Impacts to vernal pools and their watersheds in naturally occurring complexes and wetlands shall be avoided to the maximum extent practicable.
- 4. Grading Limitations for Specific Species.** The following limitations shall apply to grading activities in areas where the identified species occur:

  - i.** *Campylorhynchus brunneicapillus cousei*, Coastal cactus wren - No clearing of occupied

habitat shall occur between February 15 through August 15.

- ii. *Polioptila californica californica*, California gnatcatcher - No clearing of occupied habitat shall occur between March 1 through August 15.
- iii. *Vireo belli pusillus*, Least Bell's vireo - No clearing of occupied habitat shall occur between March 15 and September 15.
- iv. *Empidonax traillii extimus*, Southwestern willow flycatcher - No clearing of occupied habitat shall occur between May 1 and September 1.

5. **Other Species Specific Condition Requirements.** As set forth in the terms of the MSCP Plan and/or Subarea Plan, project applicants shall be required to comply with other applicable species specific conditions set forth in Table 3-5 of the MSCP Plan as a condition of project approval.

#### **Article VIII. Definitions.**

For the purposes of this Ordinance, the following words and phrases shall have the following meanings. These definitions are to be broadly interpreted and construed to provide maximum protection to the environmentally sensitive lands and resources protected by this Ordinance.

- 1. "Biological Resource Core Area" shall mean land that qualifies as an integral component of a viable regional ecosystem according to the criteria and procedure set out in Article VI.
- 2. "Clearing" refers to the removal of natural vegetation by any means, including brushing and grubbing.
- 3. "Corridor" is a specific route that is used for movement and migration of species. A corridor may be different from a "Linkage" because it represents a smaller or more narrow avenue for movement.
- 4. "Critical Populations of Sensitive Plant Species" shall mean those populations of plant species listed on Attachment C,
- 5. "Director" shall mean the Director of Planning and Land Use.

6. "Edge Effects" shall mean indirect impacts to a preserve area caused by the existence of development adjacent to the preserve area.
7. "Essential Public Facility or Project" shall mean any structure or improvement necessary for the provision of services for the health, safety and welfare of the public, which must be located in the particular location to serve its purpose and for which no less environmentally damaging location, alignment, or non-structural alternative exists.
8. "Floodplain" shall mean an area of land that would be inundated by a flood with a probability of occurring once in 100 years. These areas are identified in the report "County of San Diego Floodplain Maps" approved by the Board of Supervisors.
9. "HCP/NCCP Plan" shall mean a Habitat Conservation Plan ("HCP") approved pursuant to 16 U.S.C. Section 1539(a)(2)(A) and the plan developed in accordance with the Natural Communities Conservation Act, Cal. Fish and Game Code section 2800 and following, also referred to as an NCCP.
10. "In-kind Mitigation" shall mean mitigation with the same species or vegetation community classification as the site being impacted.
11. "Linkage" shall mean an area of land which supports or contributes to the long-term movement of wildlife and genetic material.
12. "Mature Riparian woodland" shall mean a grouping of sycamores, cottonwoods, willows and/or oak trees having substantial biological value where at least ten of the trees have a diameter of six inches or greater.
13. "Narrow Endemic Plant Species" shall mean those plant species listed on Attachment E.
14. "Native Vegetation" shall mean Vegetation composed of plants which naturally occur in the San Diego region and were not introduced directly or indirectly by humans. Native vegetation may be found in, but is not limited to, marshes, native grasslands, coastal/inland sage scrub, chaparral, woodlands, forests and other vegetation communities.
15. "Natural Vegetation" shall mean those vegetation communities included in Tiers I, II and III on the List

of San Diego County Vegetation Communities and Tier Levels (Attachment K). Non-Native grassland shall be included under this definition because it is a naturalized community which provides habitat for a number of native and some sensitive species of plants and animals.

16. "Rare, Narrow Endemic Animal Species" shall mean those species or subspecies that are listed on Attachment D.
17. "Sensitive Plant Species" shall mean those plants which meet the following criteria:

Group A = Plants that are rare, threatened or endangered in California and elsewhere; or

Group B = Plants that are rare, threatened or endangered in California but more common elsewhere; or

Group C = Plants which may be quite rare, but need more information to determine their true rarity status

Group D = Plants of limited distribution and are uncommon, but not presently rare or endangered.

18. "Sensitive Species" shall mean:

(a) Those species that are included on generally accepted and documented lists of plants and animals of Endangered, threatened, candidate or of special concern by the Federal Government, or State of California;

(b) Those species listed on Attachment C, Critical Populations of Sensitive Plant Species within the MSCP Subarea, Attachment D, Rare, Narrow Endemic Animal Species, Attachment E, Narrow Endemic Plant Species, Attachment K, San Diego County Vegetation Communities and Tier levels within the MSCP, and Sensitive Plant Species as defined by this ordinance.

(c) Those species that meet the definition of "Rare or Endangered Species" under Section 15380 of the State CEQA Guidelines.

19. "Significant Population" shall mean a group or groups of sensitive species, wherever located, the loss of which would substantially reduce the likelihood of the survival and recovery of the species.

20. "Subarea Plan" shall mean an HCP/NCCP plan prepared by the County and reviewed and approved by the Wildlife Agencies and the Board of Supervisors, to implement the Multiple Species Conservation Program within the County's jurisdictional boundaries.
21. "Take Authorization Area" shall mean the areas designated on the map attached hereto and marked Attachment B.
22. "Urban Area" shall mean an area consisting of one or more dwelling units per acre.
23. "Watershed" shall mean all surface area that drains toward a vernal pool.
24. "Wildlife Agencies" shall mean the United States Fish and Wildlife Service and the California Department of Fish and Game.
25. "Disturbed Land" shall mean land that does not have habitat value for native species as a result of activities permitted by law. Habitat that is the result of natural processes and succession may not be considered disturbed land.

#### **Article IX. General Provisions.**

- A. Severability.** If any article, section, sub-section, sentence, clause, phrase, part or portion of this Ordinance is for any reason held to be invalid or unconstitutional by a final judgement of any Court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. It is hereby declared that this Ordinance and each article, sections, subsection, sentence, clause, phrase, part or portion thereof would have been adopted or passed regardless of the fact that any one or more articles, sections, subsections, sentences, clauses, phrases, parts or portions be declared invalid or unconstitutional.
- B. Exception To The Requirements of This Ordinance.** In certain cases, during CEQA review and/or design of a project, site specific physical conditions, including but not limited to geology, slope, or location of infrastructure, may be identified which make it infeasible for the project to meet all the goals and criteria or other requirements in the Subarea Plan, but the project could be constructed without compromising the conservation of species and habitats pursuant to the Subarea Plan. The exception shall be the minimum necessary to afford relief and accommodate development. In such instances, the County may grant an

exception to this ordinance in conjunction with granting an exception to the Subarea Plan. An exception to the Subarea Plan requires the concurrence of the Wildlife Agencies.

**Section 2. Effective Date.** This Ordinance shall take effect and be in force 30 days after the date of its passage, and before the expiration of 15 days after its passage, a summary shall be published once with the names of the members voting for and against the same in the San Diego Daily Transcript, a newspaper of general circulation published in the County of San Diego. This ordinance shall become operative on the date that the County of San Diego receives an incidental take permit from the United States Fish and Wildlife Service pursuant to the Federal Endangered Species Act, 16 U.S.C. Section 1531, et seq., Section 10(a)(1)(B), and its NCCP approval, and incidental take authorization from the California Department of Fish and Game.

## **LIST OF ATTACHMENTS FOR BIOLOGICAL MITIGATION ORDINANCE**

|                |  |
|----------------|--|
| Attachment A - | MSCP Boundary Map  |
| Attachment B - | Map of Take Authorized Area  |
| Attachment C - | List of Critical Populations of Sensitive Plant Species Within the MSCP Subarea                              |
| Attachment D - | List of Rare, Narrow Endemic Animal Species Within the MSCP Subarea  |
| Attachment E - | Narrow Endemic Plant Species Within the MSCP Subarea   |
| Attachment F - | Wildlife Agencies' Preapproved Mitigation Map  |
| Attachment G - | Preserve Design Criteria   |
| Attachment H - | Design Criteria for Linkages and Corridors   |
| Attachment I - | Population Viability Analysis for the California Gnatcatcher, MSCP Resource Document Volume II, Appendix A-7 |
| Attachment J - | Habitat Evaluation Map   |
| Attachment K - | List of San Diego Vegetation Communities and their Tier Levels Within the MSCP                               |
| Attachment L - | Board of Supervisors Policy I-117  |
| Attachment M - | Table of Mitigation Ratios   |

## **ATTACHMENT A**

MSCP Boundary Map  
(see paper copy)

## **ATTACHMENT B**

Map of Take Authorized Area  
(see paper copy)

## ATTACHMENT C

### LIST OF CRITICAL POPULATIONS OF SENSITIVE PLANT SPECIES WITHIN THE MSCP SUBAREA

| Species                               | Critical Population(s)   |
|---------------------------------------|--|
| Dean's milk-vetch<br>area),           | Sweetwater River (north<br><br>Singing Hills,<br>Sloane Canyon                   |
| Orcutt's Brodiaea<br>Reservoir        | North of San Vicente   |
| Slender-pod jewelflower               | Wildcat Canyon,<br>Poway/Sanrex,<br>Fortuna Mountain,<br>Dehesa (North of River) |
| Felt-leaved monardella                | Sequan Peak,<br>Iron Mountain  |
| Gander's Butterweed<br>El             | El Cajon Mountain (between<br><br>Capitan and San<br>Vicente Reservoir)          |
| Narrow-leaved nightshade<br><br>Grade | Silverwood,<br>Fernbrook (near Mussey<br><br>Road)                               |
| Parry's tetracoccus                   | Dehesa   |

A map depicting the locations of Critical Populations shown on this attachment is on file with the County at the Department of Planning and Land Use, 5201 Ruffin Road, San Diego, California 92123.

## ATTACHMENT D

### RARE, NARROW ENDEMIC ANIMAL SPECIES KNOWN FROM SAN DIEGO COUNTY WITHIN THE MSCP SUBAREA \*

| <u>Specific name</u>                          | <u>Common name</u>             | <u>Status</u> |
|---|--------------------------------|---------------|
| <b>Mammals:</b>                               |                                |               |
| <i>Perognathus longimembris pacificus</i>     | Pacific pocket mouse           | FE, SSC       |
| <b>Birds:</b>                                 |                                |               |
| <i>Aquila chrysaetos</i>                      | golden eagle (nesting)         | SSC           |
| <i>Falco peregrinus anatum</i>                | American peregrine falcon      | CE, FE        |
| <i>Sterna antillarum browni</i>               | California least tern          | CE, FE        |
| <i>Passerculus Sandwichensis Beldingi</i>     | Belding's savannah sparrow     | CE            |
| <i>Rallus longirostris levipes</i>            | light-footed clapper rail      | CE, FE        |
| <i>Laterallus jamaicensis coturniculus</i>    | California black rail          | CT            |
| <i>Coccyzus americanus occidentalis</i>       | western yellow-billed cuckoo   | CE            |
| <i>Empidonax trailli extimus</i>              | southwestern willow flycatcher | CE, FE        |
| <i>Campylorhynchus brunneicapillus couesi</i> | coastal cactus wren            | SSC           |
| <i>Vireo belli pusillus</i>                   | least Bell's Vireo             | FE, CE        |
| <i>Speotyto cunicularia hypugaea</i>          | burrowing owl                  | SSC           |
| <b>Reptiles:</b>                              |                                |               |
| <i>Clemmys marmorata pallida</i>              | southwestern pond turtle       | SSC           |
| <b>Amphibians:</b>                            |                                |               |
| <i>Bufo microscaphus californicus</i>         | arroyo southwestern toad       | FE, SSC       |
| <i>Rana aurora draytoni</i>                   | California red-legged frog     | FT, SSC       |
| <b>Fishes:</b>                                |                                |               |
| <i>Eucyclogobius newberryi</i>                | tidewater goby                 | FE, SSC       |
| <b>Invertebrates:</b>                         |                                |               |
| <i>Branchinecta sandiegoensis</i>             | San Diego fairy shrimp         | FE            |
| <i>Streptocephalus wootoni</i>                | Riverside fairy shrimp         | FE            |

*Euphydryas editha quino*  
*Euphys vestris harbisoni*  
*Mitoura thornei*

Quino checkerspot butterfly  
Dun skipper  
Thornes hairstreak butterfly

FE

Status (Federal/State)

FE = Federally endangered

CE = State Endangered

CT = State Threatened

SSC = State Species of Special Concern

\*See Attachment A, MSCP Boundary Map

## ATTACHMENT E

### LIST OF NARROW ENDEMIC PLANT SPECIES WITHIN THE MSCP SUBAREA\*

| Scientific Name<br>Jamul                       | Common Name               | Known from<br>Metro-Lakeside- |
|--|---------------------------|-------------------------------|
| <i>Acanthomintha ilicifolia</i>                | San Diego thorn-mint      | yes                           |
| <i>Agave shawii</i>                            | Shaw's agave              |                               |
| <i>Ambrosia pumila</i>                         | San Diego ambrosia        | yes                           |
| <i>Baccharis vanessae</i>                      | Encinitas baccharis       | yes                           |
| <i>Brodiaea filifolia</i>                      | thread-leaved brodiaea    |                               |
| <i>Calochortus dunnii</i>                      | Dunn's mariposa lily      |                               |
| <i>Ceanothus cyaneus</i>                       | Lakeside ceanothus        | yes                           |
| <i>Dudleya brevifolia</i>                      | short-leaved dudleya      |                               |
| <i>Dudleya variegata</i>                       | variegated dudleya        | yes                           |
| <i>Ericameria palmeri</i> ssp. <i>palmeri</i>  | Palmer's ericameria       | yes                           |
| <i>Hemizonia conjugens</i>                     | Otay tarplant             |                               |
| <i>Lepechinia cardiophylla</i>                 | heart-leaved pitcher sage | yes                           |
| <i>Lepechinia ganderi</i>                      | Gander's pitcher sage     |                               |
| <i>Mahonia nevinii</i>                         | Nevin's barberry          | not known                     |
| <i>Monardella linoides</i> ssp. <i>viminea</i> | willowy monardella        |                               |
| <i>Nolina interrata</i>                        | Dehesa bear grass         | yes                           |
| <i>Opuntia parryi</i> var. <i>serpentina</i>   | snake cholla              |                               |

\*See Attachment A, MSCP Boundary Map

## **ATTACHMENT F**

Wildlife Agencies' Preapproved Mitigation Map  
(see paper copy)

**PRESERVE DESIGN CRITERIA**

Goals and criteria for conservation of core and linkage areas on both a project-by-project basis and for the Segment as a whole are to:

- 1) Acknowledge the no-net-loss-of-wetlands standard that individual projects must meet to satisfy state and federal wetland goals, policies, and standards and implement applicable County ordinances with regards to wetland mitigation;
- 2) Include measures to maximize the habitat structural diversity of conserved habitat areas, including conservation of unique habitats and habitat features (e.g., soil types, rock outcrops, drainages, host plants);
- 3) Provide for the conservation of spatially representative (e.g., north of I-8 vs. south of I-8) examples of extensive patches of coastal sage scrub and other habitat types that were ranked as having high and very high biological value by the MSCP habitat evaluation model;
- 4) Create significant blocks of habitat to reduce edge effects and maximize the ratio of surface area to the perimeter of conserved habitats. Subsequently, using the criteria set out in Chapter 6, Section 6.2.3 of the MSCP Plan, potential impacts from new development on biological resources within the preserve that should be considered in the design of any project include access, nonnative predators, nonnative species, illumination, drain water (point source), urban runoff (non-point source), and noise. County staff shall determine specific measures necessary to contain impacts from a new development project, and thereby avoid, reduce or mitigate edge effects on the preserve to less than significant levels.
- 5) Provide incentives for development in the least sensitive habitat areas;
- 6) Minimize impacts to narrow endemic species and avoid impacts to core populations of narrow endemic species;
- 7) Preserve the biological integrity of linkages between Biological Resource Core Area; and
- 8) Achieve the conservation goals for covered species and habitats.

**DESIGN CRITERIA FOR LINKAGES AND CORRIDORS**

The following are the design criteria to protect the biological values of regional linkages and corridors:

- (1) Habitat linkages as defined by the Biological Mitigation Ordinance, rather than just corridors, will be maintained.
- (2) Existing movement corridors within linkages will be identified and maintained.
- (3) Corridors with good vegetative and/or topographic cover will be protected.
- (4) Regional linkages that accommodate travel for a wide range of wildlife species, especially those linkages that support resident populations of wildlife, will be selected.
- (5) The width of a linkage will be based on the biological information for the target species, the quality of the habitat within and adjacent to the corridor, topography, and adjacent land uses. Where there is limited topographic relief, the corridor must be well vegetated and adequately buffered from adjacent development.
- (6) If a corridor is relatively long, it must be wide enough for animals to hide in during the day. Generally, wide linkages are better than narrow ones. If narrow corridors are unavoidable, they should be relatively short. If the minimum width of a corridor is 400 feet, it should be no longer than 500 feet. A width of greater than 1,000 feet is recommended for large mammals and birds. Corridors for bobcats, deer, and other large animals should reach rim-to-rim along drainages, especially if the topography is steep.
- (7) Visual continuity (i.e., long lines-of-sight) will be provided within movement corridors. This makes it more likely that the animals will keep moving through it. Developments along the rim of a canyon used as a corridor should be set back from the canyon rim and screened to minimize their visual impact.

- (8) Corridors with low levels of human disturbance, especially at night, will be selected. This includes maintaining low noise levels and limiting artificial lighting.
- (9) Barriers, such as roads, will be minimized. Roads that cross corridors should have 10-foot high fencing that channels wildlife to underpasses located away from interchanges. The length-to-width ratio for wildlife underpasses is less than 2, although this restriction can be relaxed for underpasses with a height of greater than 30 feet.
- (10) Where possible at wildlife crossings, road bridges for the vehicular traffic rather than tunnels for wildlife use will be employed. Box culverts will only be used when they can achieve the wildlife crossing/movement goals for a specific location. Crossings will be designed as follows: sound insulation materials will be provided; the substrate will be left in a natural condition, and vegetated with native vegetation if possible; a line-of-sight to the other end will be provided; and, if necessary, low-level illumination will be installed in the tunnel.
- (11) If continuous corridors do not exist, archipelago (or stepping-stone) corridors may be used for short distances. For example, the gnatcatcher may use disjunct patches of sage scrub for dispersal if the distance involved is under 1-2 miles.

**ATTACHMENT I**

Population Viability Analysis for the California Gnatcatcher, MSCP Resource Document  
Volume II, Appendix A-7

(This is a 40 page preprinted document that is not available electronically)

## **ATTACHMENT K**

### **LIST OF SAN DIEGO COUNTY VEGETATION COMMUNITIES AND THEIR TIER LEVELS WITHIN THE MSCP\***

#### **TIER I**

Closed Cone Coniferous Forest including Torrey Pine Woodland and Cypress Forest  
Coastal Bluff Scrub  
Southern Maritime Chaparral\*\*  
Mafic Southern Mixed Chaparral and Mafic Chamise Chaparral  
Native Grassland  
Oak Woodlands and Broad Leaved Upland Forest  
Wetlands\*\*, including Vernal Pools, Alkali Marsh, Freshwater Marsh, Riparian Forests, Riparian Woodlands, and Riparian Scrubs  
Maritime Succulent Scrub\*\*

#### **TIER II**

Coastal Sage Scrub  
Coastal Sage-Chaparral Scrub  
Flat-topped Buckwheat

#### **TIER III**

Chaparral except for Southern Maritime Chaparral and Mafic Chamise and Mafic Southern Mixed Chaparral  
Non-native grassland \*\*\*

#### **TIER IV (Lands which do not support natural vegetation and which are not regulated by this ordinance)**

Disturbed Lands  
Agricultural Lands  
Eucalyptus Woodland

\* Impacts to vegetation communities within the MSCP Subarea shall be mitigated within the MSCP Subarea shown on Attachment A.

\*\* These vegetation communities require in-kind mitigation.

\*\*\* Notwithstanding any mitigation ratios set out in Attachment M, non-native grasslands shall be mitigated at the ratio of 0.5 acres of mitigation land for every 1.0 acres of land impacted. Occupied Burrowing owl habitat shall be mitigated according to the Biological Mitigation Ordinance.

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| MITIGATION BANKING POLICY | I-117                | 1 of 8      |

Purpose

This Mitigation Banking Policy is intended to set forth the procedures to be followed in establishing, using, and managing mitigation banks. This Policy is divided in two sections, as follows.

Section 1: Addresses the issue of establishing and administering County owned and managed mitigation banks.

Section 2: Addresses the issue of recognizing and using private mitigation banks.

This Policy will streamline planning for public and private projects because off-site mitigation credits to meet State and Federal Endangered Species Acts ("ESA") and California Environmental Quality Act ("CEQA") requirements will be readily available. Additionally, this Policy will further the goals of the County Open Space Program by directing mitigation to areas in the County with the highest biological value, resulting in optimal use of the preserved land. Elements of this Policy include the following:

Section 1. County Mitigation Banks.

- A. Management framework for overseeing the County's Mitigation Bank Program;
- B. Criteria for selecting lands to be included in mitigation banks;
- C. Process for establishing credits in mitigation banks;
- D. Process for using credits in the bank;
- E. Ownership requirements;
- F. Land/resource management/assessment of costs;
- G. Funding requirements.

Section 2. Private Mitigation Banks.

- A. County recognition of private mitigation banks;
- B. Process for using credits in the bank.
- C. Administration of privately owned banks.

Background

The County of San Diego carries out a variety of projects to meet its

goal of serving the public. These include, but are not limited to, road construction and improvement projects; operation and expansion of solid waste facilities, airports, sewage treatment facilities, courthouse administration, building and operation and expansion

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of detention centers; and construction and improvement of parks. In addition, private development projects for residential, commercial, industrial, recreational, and other purposes are regularly processed through the County. These public and private projects often cause the disturbance of habitat for sensitive species, resulting in the need to mitigate project impacts. A mitigation bank is a technique whereby the County or a private party acquires and manages open space lands for preservation ahead of any need for mitigating a County or private project. Establishment of a County mitigation bank, from which credits may be withdrawn as County projects proceed, will save the County money in mitigation acquisition costs, and will streamline the CEQA process and the granting of approvals under the State and Federal ESAs. Establishing procedures to be followed in using private mitigation banks will likewise streamline the CEQA process for private development projects.

### Policy

It is the policy of the Board of Supervisors that:

The County will assemble land within mitigation banks to meet the resource needs of County public projects. The County will also encourage assemblage of land within private mitigation banks.

### Section 1. County Mitigation Banks.

#### A. Management Framework.

The Chief Administrative Officer shall appoint a Mitigation Bank Technical Committee ("MBT Committee") for overseeing the County's Mitigation Bank Program. The MBT Committee shall include directors or their representatives of the Departments of Parks and Recreation, General Services, Planning and Land Use and Public Works. The purpose of this MBT Committee is to review proposals for mitigation banks to determine conformance to the provisions of this Policy and to make recommendations to the Board of Supervisors, and the Chief Administrative Officer, on the establishment and operation of County mitigation banks. The Committee shall select from its members a Chairperson.

#### B. Criteria.

The following criteria shall be used in selecting the land to be designated and/or acquired as a County mitigation bank:

1. The property should include sensitive and listed plant and animal species. Property that has the potential for revegetation of sensitive habitat may be considered.
2. The property should be large enough to sustain the biological viability of the resources present or should be adjacent to other permanently protected land so that in combination, the biological viability of the resources will be ensured.

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3. The property should contribute to implementation of the County Open Space Planning efforts where adopted or be identified as high value areas on resource evaluation maps.
4. For property which is to be acquired by the County for a County owned mitigation bank, the property owner must be willing to sell or donate the property to the County.

The following types of property shall not be considered for mitigation banking purposes:

1. Property previously designated for park use or open space purposes; property acquired in the past for mitigation purposes; property designated for a public purpose which is not consistent with habitat/resource protection, ie: Circulation Element right-of-way, or Solid Waste Facility.
2. Property in County ownership which was acquired with funds limiting the use of the property to certain purposes. Examples include property acquired with the road fund and park property acquired with State Bond Act funds, which restricts the use of the land.

C. Process for Establishing Credits in County Banks.

1. Property currently in County ownership or control will be evaluated by the MBT Committee based on the criteria set forth in Section 1. B. above, for potential inclusion in a mitigation bank. An environmental review of the resources present on the site should be performed, and a report generated which includes information on the baseline environmental data (type, quality, extent and location of resources) on the property. The amount of credit to be granted in a bank shall be determined based upon negotiations with the U.S. Fish and Wildlife Service and the California Department of Fish and Game ("the Wildlife Agencies"), using guidelines set forth in the Official Policy on Conservation Banks, adopted April 7, 1995 by the California Resources Agency and the California Environmental Protection Agency. Credits shall be based on the location of the property and resources present on the site. Once the property has been determined by the MBT Committee to be appropriate for inclusion in a bank, and an estimated number of credits determined, the Department of Planning and Land Use should develop a mitigation banking agreement ("Agreement"), in a form approved by County Counsel, and should negotiate the terms of such Agreement with the Wildlife Agencies. The Agreement shall set forth the number of credits available for the property proposed for inclusion in the mitigation bank and a management plan for the property. The Agreement shall be approved by the Board of Supervisors.
2. Each County department shall maintain a list of public projects planned for the upcoming five years. An estimate as to the type and amount of habitat likely to be disturbed by the project should also be prepared. A master compilation of this list shall be maintained by the Department of Planning

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and Land Use. If the County owned bank is exhausted, or the bank does not contain credits of the type needed for a future County project, property should be acquired for mitigation banking purposes, using criteria set forth in Section 1. B., above. Prior to seeking property for inclusion in the bank, the master list of future projects should be consulted to determine what type of habitat to purchase.

3. In acquiring property for County owned mitigation banks, the County will rely on acquiring properties from willing sellers and will not use the power of eminent domain. Once a suitable site for acquisition by the County is found, an environmental review of the resources present on the site should be performed, and a report generated which includes information on the baseline environmental data (type, quality, extent and location of resources) on the property. The amount of credit to be granted in a bank shall be determined based upon negotiations with the Wildlife Agencies, using guidelines set forth in the Official Policy on Conservation Banks, adopted April 7, 1995 by the California Resources Agency and the California Environmental Protection Agency. Credits shall be based on the location of the property and resources present on the site. Informal agreement as to the number of credits available should be reached with the Wildlife Agencies prior to requesting authorization from the Board of Supervisors to purchase the site. Purchase of the site should be contingent upon approval of an Agreement, in a form approved by County Counsel, by the Wildlife Agencies and the Board of Supervisors.

D. Process for Using Credits in the Bank.

The Department of Planning and Land Use shall be responsible for administering and accounting for the credits created by County Mitigation Banking Agreements.

County departments shall analyze their need for mitigation for a project early in the environmental review process. Once the need for mitigation for a particular project is known, the project planner/manager shall contact Planning and Land Use to determine whether credits are available in a County owned mitigation bank to satisfy the project mitigation requirements.

Use of mitigation credits from mitigation banks must be approved by the County discretionary body responsible for certifying/approving the necessary environmental documents for the project, with concurrence from the Resource Agencies. The Department of Planning and Land Use shall be notified when a project has been approved which utilizes credits from a County mitigation bank. The Department of Planning and Land Use shall be responsible for the record keeping task of debiting credits from County mitigation banks as projects are approved.

County Departments shall not be bound to purchase credits from a County mitigation bank when fulfilling the requirement for mitigation of the impacts of a project. If it is appropriate and in the best interests of the County, the County may purchase credits or land from a private bank.

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E. Ownership Requirements.

Mitigation banks must be maintained in perpetuity. Title may be held in fee by the County, the Wildlife Agencies or another entity authorized in the Mitigation Bank Agreement. For banks held in fee by the County, the Wildlife Agencies require that the County grant an open space easement over mitigation bank property either to a non-profit organization which has as its primary purpose the preservation, protection or enhancement of land in its natural, scenic, forested or open space condition or use, or to the State Department of Fish and Game, or any district or other state or local governmental entity if otherwise authorized to acquire and hold title to real property.

F. Land/Resource Management/Assessment of Costs.

Management of resources present in the mitigation banks is necessary in order to maintain the bank's habitat value. Before property is acquired for a County mitigation bank, a management plan for the property shall be prepared under the direction of the Department of Parks and Recreation and approved by the MBT Committee. The goal of the management plan shall be to maintain the property, and the resources present on the property, as a viable habitat, in perpetuity. The management plan shall include, but not be limited to the following:

- Baseline environmental data (type, quality, extent and location of resources on the property).
- A description of the number of credits available.
- A description of the access control measures to be taken.
- A description of the vegetation management techniques appropriate to the resources.
- A listing of any reporting requirements established by the Resource Agencies.
- An estimate of the start-up and annual costs for administration and management activities, including an estimate of the amount necessary to capitalize a trust account to support the bank in perpetuity.
- Any other management activity specifically required in order to maintain the resources in their present condition.

The management plan for County mitigation banks should be approved by the Resource Agencies, and included in the terms of the mitigation banking agreement identified in Section 1. C., above. The management plan shall be administered under the direction of the Department of Parks and Recreation, unless another agency has been designated by the Board of Supervisors to administer the management plan for County mitigation banks. Based on the resources present, size and location of the bank in relation to other open space lands managed by

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the County, management activities may be carried out directly by County staff or under contract with a private resource manager. The cost of the preparation of the management plans should either be included in the planning costs of a County project requiring the establishment of a bank or as part of the annual Department of Parks and Recreation budget. This determination will be made by the Board of Supervisors during the annual budget process.

G. Funding Requirements/Cost of Credits.

For County projects, costs associated with the mitigation bank will be borne by the Departments which initiate the projects ultimately using credits in a Bank. Based on the information obtained from the management plan referenced above, a trust account will be established by Auditor and Controller to fund the management and administration of the bank. Interest from the account will be used to fund administration and management costs. If an enterprise fund was used to initially establish a mitigation bank, as credits are allocated to County projects, a prorated amount for the initial capitalization shall be paid to the account that originally established the trust fund. A separate Resource Replacement Fund be established for replacing the resource value of banks as they are credited to projects through either buying additional lands or credits in private banks. The purchase of each credit should include a contribution to this replacement fund in addition to contributing to the operation and maintenance fund. The MBT Committee shall determine the credit cost per unit.

Section 2. Private Mitigation Banks.

A. County Recognition of Private Mitigation Banks.

The County will rely upon the Wildlife Agencies and private individuals for the establishment of private mitigation banks. The Official Policy on Conservation Banks sets forth standards and criteria for establishment of private mitigation banks. This Policy requires an agreements between the bank developer and the appropriate regulatory agency(s). The Official Policy provides for assuring biological viability, resource protection, resource management, and establishment of credits. Prior to the approval of a bank in the unincorporated area by the State of California, the County will request that it be notified and allowed to review the proposed bank and comment on the conformance of proposed banks with this policy (Section 1.B.1-3). The MBT Committee shall review and comment on each proposal for a private mitigation bank within 30 days of the receipt of the request. The County shall rely on the Wildlife Agencies to require and approve management plans for private mitigation banks.

The County will also request the State to provide the County with a list of approved banks in the San Diego region which the County will make available by posting to agencies and private individuals needing mitigation credits.

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B. Guidelines for the Use of Mitigation Credits from Private Mitigation Banks for Private Projects.

When a project proposes to use mitigation credits from a private mitigation bank, the Department of Planning and Land Use shall verify the bank has a valid mitigation bank agreement approved by the Wildlife Agencies. The privately owned bank owner/manager and project proponent shall also be required to provide to the Department of Planning and Land Use an accounting of the available mitigation bank credits.

The Department of Planning and Land Use shall review the proposal for use of mitigation credits and shall submit a recommendation on the use of such credits to the approving authority. Use of mitigation credits shall be reviewed and approved on a case by case basis.

C. Administration of Privately Owned Banks.

Responsibility for administration of privately owned mitigation banks shall be established and monitored by the Wildlife Agencies as a requirement of mitigation banking agreements.

Costs associated with the use of privately owned mitigation banks will be addressed in a manner consistent with the terms of the mitigation bank agreement approved by the Wildlife Agencies.

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| <div data-bbox="74 852 318 921"> <u>Board Action</u><br/> 10/4/95 (2) </div> <div data-bbox="74 978 298 1050"> <u>Sunset Date</u><br/> 12/31/03 </div>  |               |        |
| <div data-bbox="103 1451 407 1499"> <u>CAO Reference</u> </div> <div data-bbox="74 1619 837 1751"> 1. Department of Planning and Land Use<br/> 2. Department of Parks and Recreation<br/> 3. Department of Public Works<br/> 4. General Services </div> <div data-bbox="74 1776 488 1814"> BSPOL\MITBANKS.POL;tf </div> |               |        |

## ATTACHMENT M

### TABLE OF MITIGATION RATIOS

| <b><i>TIER I</i></b>   | <b><i>Impacted land</i></b>                      |  |
|--|--|--|
| <b><i>Mitigation Site*</i></b>                               | meets criteria for biological resource core area | does not meet criteria for biological resource core area |
| meets criteria for biological resource core area             | 2:1  | 1:1  |
| does not meet the criteria for biological resource core area | 3:1  | 2:1  |

| <b><i>TIER II</i></b>   | <b><i>Impacted land</i></b>                      |  |
|---|--|--|
| <b><i>Mitigation Site*</i></b>                                      | meets criteria for biological resource core area | does not meet criteria for biological resource core area |
| <i>meets criteria for biological resource core area</i>             | 1.5:1  | 1:1  |
| <i>does not meet the criteria for biological resource core area</i> | 2:1  | 1.5:1  |

| <b><i>TIER III</i></b>  | <b><i>Impacted land</i></b>                      |  |
|---|--|--|
| <b><i>Mitigation Site*</i></b>                                      | meets criteria for biological resource core area | does not meet criteria for biological resource core area |
| <i>meets criteria for biological resource core area</i>             | 1:1  | 0.5:1  |
| <i>does not meet the criteria for biological resource core area</i> | 1.5:1  | 1:1  |

*\* Impacts to vegetation communities within the MSCP Subarea shall be mitigated within the MSCP Subarea*